



CALIFORNIA URBAN WATER AGENCIES

June 20, 2002

Mr. Patrick Wright
Executive Director
CALFED
1416 9th Street, Rm. 1155
Sacramento, CA 95814

Mr. Tom Gohring
Program Manager
Water Use Efficiency
1416 Ninth Street, Room 1155
Sacramento, CA 95814

Subject: Urban Water Conservation Certification Project Assurances/Incentives

Dear Mr. Wright and Mr. Gohring:

California Urban Water Agencies (CUWA) appreciates this opportunity to provide input to the CALFED Water Use Efficiency Subcommittee (WUE PAC).

As you know CUWA has not actively participated in the deliberations of the ad hoc working group which has been discussing the certification framework for the past several months. However, several staff of CUWA member agencies have participated and have kept CUWA informed of progress.

We are aware that there appears to be a consensus that water conservation can best be advanced through the use of incentives for urban water purveyors to achieve certified status. The CUWA member agencies strongly believe that the best incentive, and possibly the only one which would be fully effective, is the procedure described in the attached paper. This concept has been discussed in general terms by CUWA agency personnel and some WUE PAC members, but we are now submitting specific language for subcommittee consideration.

In essence this proposal would establish a presumption that a water purveyor certified to be in compliance with its obligations under the urban MOU would not be asked to rejustify its level of conservation activity during review of subsequent individual projects.

We believe that implementation of this concept would provide the best incentive for the governing Boards of water agencies to support mandatory review and certification of agency compliance with the urban MOU. This approach would also improve administrative efficiency by establishing a one-stop-shop for evaluating the adequacy of urban conservation activities.

Please forward this proposal to the WUE subcommittee for consideration at its June 24 meeting. If you have any questions please contact me at 916-552-2929.

Sincerely,

Walt Pettit
Executive Director

cc: CUWA Board of Representatives

URBAN WATER CONSERVATION CERTIFICATION PROCESS ASSURANCES

California Urban Water Agencies Proposal June 20, 2002

Introduction

One of the fundamental tenets of CALFED is that improvements in all elements of the program must be linked to each other. A prime example of this linkage is the relationship between improved water supply reliability and increased water use efficiency through conservation. It is the responsibility of urban water suppliers to demonstrate that they are implementing best efforts to achieve feasible and practicable water conservation at the same time as new water supplies are developed. Conversely, urban water suppliers that have demonstrated their commitment to water conservation must receive assurances that they will not be faced with never ending demands for still higher levels of conservation whenever they seek to implement water supply projects.

The Best Management Practices Memorandum of Understanding for Water Conservation (BMP MOU) has a similar goal. That is, to require urban water suppliers to implement aggressive water conservation programs consistent with the BMP MOU, in return for assurance that implementation of those programs will constitute an appropriate level of conservation in any regulatory proceedings in which the agencies' conservation is at issue.

A CALFED-convened stakeholder group has been assisting in the development of a draft framework that would integrate the BMP MOU certification process with implementation of projects consistent with the ROD which are intended to increase water supply reliability. The group has developed recommendations in several areas, including a recommendation that the certification process emphasize incentives over disincentives. Assurances and streamlined approvals for water supply projects have been suggested as the most effective form for these incentives.

General Recommendation

CUWA believes that tying BMP MOU certification to appropriate permitting and approval processes, including but not limited to the Clean Water Act Section 404 permitting process and Section 401 water quality certification process, would be an effective way to link implementation of water conservation with assurances that CALFED water supply reliability projects will be built. This linkage would be achieved by providing that any urban water supplier with a State Water Resources Control Board certified water conservation program would be deemed to have met any requirement in the appropriate permitting or approval process to consider additional water conservation as an alternative, or part of an alternative, to implementing a water supply project which is consistent with the CALFED ROD.

Background

Procedures adopted by the regulatory agencies for permitting and approval processes sometimes provide for evaluation of water conservation measures of project proponents. For example, the EPA guidelines for consideration of projects subject to Section 404 require a finding that the project represents the least environmentally damaging practicable alternative (“LEDPA”), with the notion of practicability meaning:

“... [A]vailable and capable of being done after taking into consideration costs, existing technology, and logistics in light of overall project purposes.” (40 C.F.R. § 230.3(q).)

In the case of a project to meet water supply needs, these EPA regulations in essence create a presumption that additional conservation measures – as well as recycling and other “softpath” alternatives – are available as alternatives, or part of an alternative, that do not impact the aquatic environment. The proponent of the water supply project must overcome that presumption by demonstrating that additional conservation is not practicable, or does not meet the project goals, that all other practicable alternatives have been or are being implemented, and there is still a need for the proposed project.

At the same time, the Record of Decision for the CALFED Program includes a Section 404 MOU intended to streamline Section 404 permitting by limiting the scope of alternatives that must be considered in the LEDPA finding. When a project proponent applies for a Section 404 permit, reexamination of alternatives already analyzed at the program level is not required, and only project-level alternatives need be analyzed in making the LEDPA finding. This streamlined LEDPA review and approval procedure is conditioned on implementation of the programs and commitments of the CALFED Program – including water conservation – on the schedule as set forth in the ROD.

CUWA proposes that SWRCB certification of an urban water supplier’s water conservation program should constitute a finding that conservation beyond the levels contained in the certified program is not a practicable alternative, or part of a practicable alternative, for the purposes of the LEDPA analysis. While additional water conservation would be eliminated as an alternative, or a requirement for part of an alternative, the LEDPA analysis would still be required with respect to other potential alternatives to the proposed water supply project. A similar approach could also be taken with regard to other permitting and approval processes.

Approaches for Obtaining Assurances

The approach would be to enact federal legislation codifying this SWRCB certification/regulatory agency assurances approach to ROD projects proposed by urban water suppliers. Inclusion of the language in a CALFED authorization or appropriation bill would limit the proposed approach to only those projects contemplated in the ROD and would not amend regulatory agency processes with respect to other states or to projects not anticipated by CALFED. A simple version of such language would be:

“An urban water purveyor whose water conservation program has been certified by the California Water Resources Control Board as being in compliance with the requirements of the Best Management Practices Memorandum of Understanding dated _____, as it might be amended, shall be deemed to have fully considered water conservation as an alternative, or part of an alternative, to the proposed activity, and that an increase in the level of conservation beyond that contained in its certified water conservation program is not practicable within the meaning of the Clean Water Act and any rules or regulations adopted thereunder.”